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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,816	02/19/2002	Joseph Raymond Diehl	8868	7132

27752 7590 11/17/2004

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/078,816

Applicant(s)

DIEHL ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-12, and 14-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Neading et al. (6,515,194).

With respect to claims 1, 10, and 17, Neading discloses a wearable article, as shown in figure 2, comprising a topsheet 18 and a dehydration indicator 14A, 16. The dehydration indicator 14A, 16 is adapted to measure the ionic strength and specific gravity of urine and provide a visible response, as disclosed in column 4, lines 1-8. The wearable article is an absorbent article, as shown in figure 2, comprising an outer cover 22, a fluid permeable topsheet 18, and an absorbent structure 20.

With respect to claims 2, 3, and 13, the dehydration indicator 14A, 16 provides a qualitative indication of the specific gravity, which can be used to determine dehydration.

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With respect to claims 4, 11, 12, and 18, the dehydration indicator 14A, 16 is affixed to, or disposed on, the topsheet 18, as shown in figure 3, and is fully capable of being detached from the topsheet 18.

With respect to claims 5, 6, 19, and 20, the dehydration indicator 14A, 16 comprises an indicium, the indicium being a color change, as disclosed in column 4, lines 1-4.

With respect to claims 7 and 15, the dehydration indicator is disposed on a carrier element, as disclosed in column 3, lines 57-58.

With respect to claims 8 and 14, the dehydration indicator 14A, 16 is covered by a semipermeable membrane 14B, as shown in figure 3.

With respect to claims 9 and 16, the dehydration indicator 14A, 16 is in fluid communication with a fluid transport element 14B, as shown in figure 3.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neading et al. (6,515,194) as applied to claims 1 and 10 above, and further in view of Lee (5,947,943).

Neading discloses all aspects of the claimed invention but remains silent with respect to the outer cover 22.

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Lee discloses an absorbent article having an indicator located therein, as described in column 3, lines 12-15. The outer cover 16 of the article is translucent so the indicator may be easily viewed without removing the article, as disclosed in column 3, lines 46-55.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to make the outer cover of Neading translucent, as taught by Lee, so the indicator may be easily viewed without removing the article.

### ***Response to Arguments***

Applicant's arguments filed 24 August 2004 have been fully considered but they are not persuasive.

In response to the applicant's argument that Neading fails to mention ionic strength, it is noted that Neading discloses an indicator that exhibits a change due to the specific gravity of urine absorbed by the article. The instant specification discloses on page 4, lines 3-32, that a change in the specific gravity of urine corresponds to, and therefore signals, a change in the ionic strength of urine, thus indicating the possibility of dehydration in the patient. Therefore, Neading's indicator measuring the specific gravity of urine is fully capable of being interpreted in view of the ionic strength of urine. The indicator disclosed by Neading will change color or otherwise exhibit a change at a specific level of specific gravity. The level of specific gravity corresponds to an ionic strength, as disclosed on page 4, lines 25-27, of the instant specification. While Neading does not explicitly disclose the measurement of urine ionic strength, the urine ionic strength can be determined from the specific gravity of the urine, which is

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measured by the indicator of Neading. The article of Neading therefore provides an indicator adapted to measure the urine ionic strength that correlates to a specific gravity of the urine.

With respect to claims 2, 3, and 13, the indicator of Neading changes color in response to the specific gravity of the urine absorbed, as described in column 4, lines 1-4. A change in color is a qualitative indication.

With respect to claims 5, 6, 19, and 20, a color change is an indicium resulting from a chemical reaction. The change in color indicates the presence of a compound or condition capable of causing the chemical reaction.

With respect to claims 8 and 14, the indicator of Neading is disposed on the transport layer 14, as disclosed in column 2, lines 54-57. This element is a fluid-permeable material, as disclosed in column 2, lines 57-59, and therefore fulfills the claimed limitation of semipermeable membrane.

With respect to claims 3 and 13, Lee teaches the use of a translucent backsheet to allow an indicator to be viewed through the backsheet. Modification of the article of Neading in view of this teaching would allow the entire article of Neading to be covered by the backsheet while the indicator remains visible. Thus, Lee teaches an improvement to Neading, and the rejection under 35 U.S.C. 103(a) stands.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703) 308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

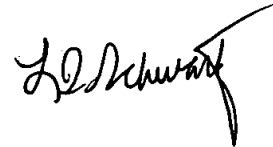
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CUA

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November 12, 2004



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